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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,249	08/06/2003	Donald C. Roe	8556C	9458

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

88

Office Action Summary	Application No. 10/635,249	Applicant(s) ROE ET AL.	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawal of Allowability

The indicated allowability of claims 17-20 is withdrawn in view of the newly discovered reference(s) to Zajackowski (US 5,236,428 A). Rejections based on the newly cited reference(s) follow.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Zajackowski.

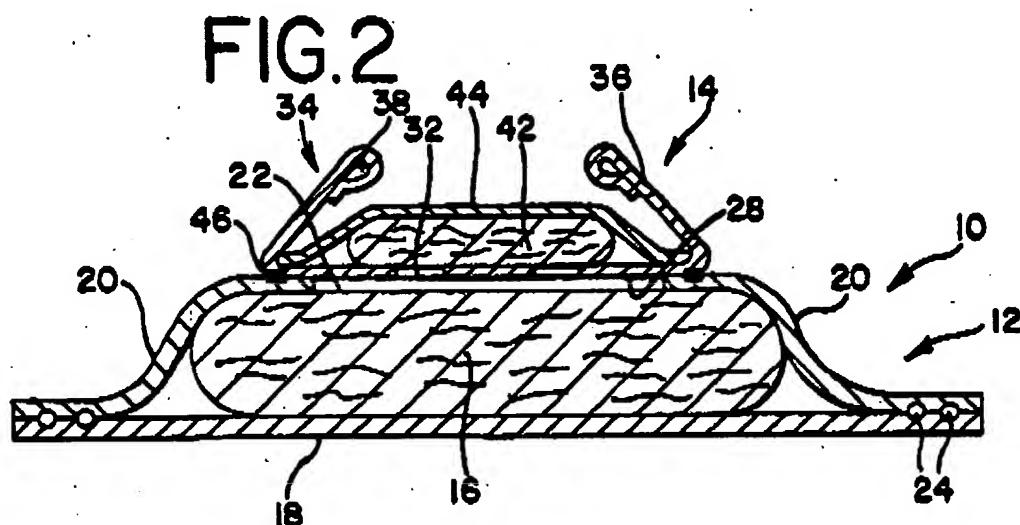
Regarding claim 17, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18); a topsheet (20) joined to the backsheet (18); an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20); and

a temperature change element (42, 44) disposed on the topsheet (20) along the longitudinal axis, the temperature change element (42, 44) includes a permeable layer (44) having a body facing surface, a temperature change substance (42) disposed on the permeable

Art Unit: 3761

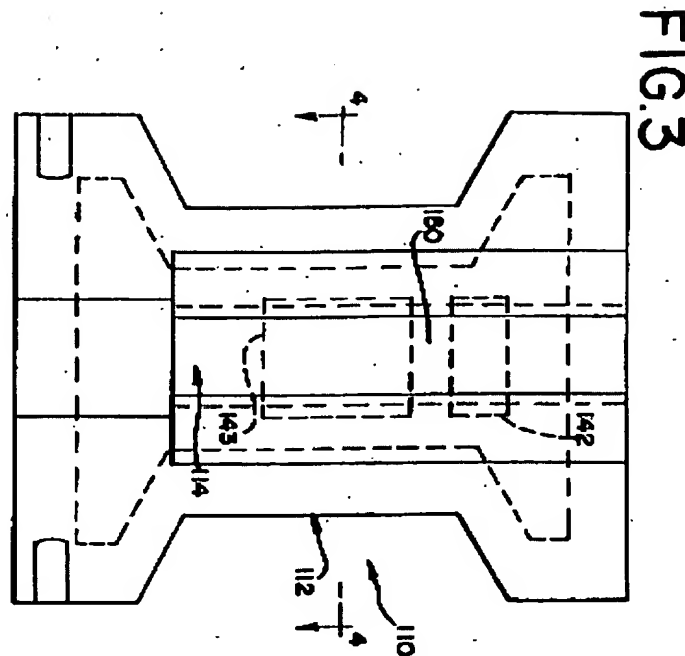
layer (44), and an impermeable layer (28) partially wrapped around the permeable layer (44) such that longitudinal edges (36) of the impermeable layer (28) stop short of meeting, leaving a center portion of the body facing surface of the permeable layer (44) exposed (see figure 2, *infra*).



Regarding the interpretation of “temperature change element”, this limitation is functional. Apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114. Zajaczkowski teaches an absorbent material (42) that is capable of changing temperature when fluids (e.g., urine) having a different temperature than the material are applied to that material. This change in temperature can be conveyed to a wearer of the article.

Regarding claim 18, Zajaczkowski teaches a temperature change substance (42) on a body-faceable surface of the permeable layer (44) in parallel regions (142, 143) covered by the longitudinal edges (36) of the impermeable layer (28)(see figure 3, *infra*).

Regarding the “body facing surface of the permeable layer,” this layer is capable of being positioned such that either flat surface can face a human body.



Regarding claim 19, Zajackowski teaches a disposable diaper (10) having a longitudinal axis, a first waist region, a second waist region, and a crotch region interposed therebetween, the disposable diaper (10) comprising:

a backsheet (18) ; a topsheet (20) joined to the backsheet (18);

an absorbent core (16) disposed intermediate the backsheet (18) and the topsheet (20) and impermeable barrier leg cuffs (28, 36) disposed on the topsheet (20) parallel to the longitudinal axis and temperature change elements (44, 142, 143) disposed on the barrier leg cuffs (28, 36), each of the temperature change elements (44, 142, 143) includes a permeable layer (44) having a body-faceable surface, an impermeable layer (28) formed by the barrier leg cuff (28, 36), and a temperature change substance (142, 143) disposed on the permeable layer.

Regarding claim 20, Zajackowski teaches a temperature change substance (42) disposed between the permeable layer (44) and the leg barrier cuff (28, 36)(see figure 2, supra).

Art Unit: 3761

Allowable Subject Matter

Claims 12-14 and 16 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
15 March 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

